

## **REMARKS**

Claims 54–56, 61–63, 68–70, 73–74, and 78–83 are currently under examination. Support for the amendment to claim 63 can be found, for example, in claim 54 and in Example 3. No new matter has been added.

### **Rejection under 35 U.S.C. §112, ¶1 (Written Description)**

The instant claims stand rejected under §112, for allegedly failing to provide adequate written description.

On page 5 at paragraph 2 of the Office Action, the Examiner concedes that the specification provides adequate written description of the *S. cerevisiae* (yeast) ergosterol metabolism genes, but contends that their altered forms are not adequately described in terms of their structure(s). However, in the present claims, the phrase "altered" refers only to the t-HMG gene, which is a variant of the HMG1 gene without the membrane-bound domain. See for example, EP 486290 which discusses the alteration and is cited in the specification on page 9 at line 5.

Thus, with regards to the t-HMG gene, the disclosure provided in the specification provides adequate guidance on the structural features (i.e., polynucleotide sequence) of such an altered gene and organizations thereof in altered form.

As for the nucleotide sequence of the ERG9, ERG1 and SAT1, ADH1 yeast genes and/or the promoter sequences associated therewith, it is now well-settled that a specification need not disclose, and preferably omits, what is well known to those skilled in the art when an application is filed. However, the skilled worker could easily refer to the articles discussed and cited on page 2-3 and 28-29 of the specification. The articles disclose structural and/or functional aspects of the genes recited in the claims. Thus, a skilled artisan can readily determine both the nature (i.e., mutant or wild-type) as well as the structure (i.e., amino acid sequence) of the proteins encoded by the genes. Reference to a particular sequence is not necessary at all. A cursory review of the aforementioned disclosures is all that is needed.

Thus, it is believed that the amendments to claims and the comments above render the rejection moot.

### **Rejections under 35 USC 102**

Claim 63 stands rejected under 35 USC 102 as allegedly being anticipated by Hinnen et al. (Proc. Natl. Acad. Sci. 75, 1929-1933 (1978) as evidenced by Weber et al (US 2004/0235088).

The amendments to claim 63 render the rejection moot.

In view of the above-mentioned arguments and amendments, it is respectfully submitted that the claims in the application are in condition for allowance. However, if the Examiner has any questions or comments, he is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,

/Anthony J. Zelano/

---

Anthony J. Zelano, Reg. No. 27,969  
Attorney/Agent for Applicant(s)

/Jennifer J. Branigan/

---

Jennifer J. Branigan, Reg. No. 40,921  
Agent for Applicant(s)

MILLEN, WHITE, ZELANO  
& BRANIGAN, P.C.  
Arlington Courthouse Plaza 1, Suite 1400  
2200 Clarendon Boulevard  
Arlington, Virginia 22201  
Telephone: (703) 243-6333  
Facsimile: (703) 243-6410

Attorney Docket No.: JS-0060-C01

Date: 13 October 2009